

THE STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS. SUPERIOR COURT

Evelyn Sirrell, et al.

v.

State of New Hampshire, et al.

99-E-0692

ORDER

The petitioners are property owners from three different New Hampshire municipalities seeking equitable relief from the statewide education property tax. They filed this Petition for a Declaratory Judgment and for Injunctive Relief requesting that this Court declare the tax unconstitutional, enjoin the State from collecting and distributing this tax, and order the reimbursement of tax dollars already paid and collected under this taxation scheme.

I.BACKGROUND

This dispute arose from the legislature's adoption of House Bill 999 ("HB 999"), an act establishing a uniform statewide education property tax to fund a constitutionally adequate public education. At the time of filing this petition, HB 999 was the most recent legislative response to the ongoing Claremont litigation, which requires that the State provide all children with a constitutionally adequate public education and guarantee adequate funding for that education. See Claremont School Dist. v. Governor, 138 N.H. 183, 184 (1993) ("Claremont I") (holding that part I, article 83 of New Hampshire Constitution mandates a state funded, constitutionally adequate public education).

In 1997, the Supreme Court found that the existing system of school funding in New Hampshire, through disparate local property tax rates varying across towns at percentages up to 400%, violated part II, article 5 of the New Hampshire Constitution. Claremont School Dist. v. Governor, 142 N.H. 462, 465 (1997) ("Claremont II"). The Court found that it was the duty of the legislature and of the Governor to define what is a constitutionally adequate education, to determine the cost of that education, and to implement legislation to fund that education. See id. at 475-477.

State to validate data, and calculate confidence and reliability indicators for all of their statistics used. All of the experts also indicated that the equalization process is aimed at establishing equity between towns, but is not focused nor directed to establishing equity between taxpayers. Finally, all of the experts agree that full revaluations of property are required at least every six years, and preferably every five years as required by the New Hampshire Constitution, to maintain any sense of uniformity and accuracy in property tax assessment system.

The petitioners hired the property tax consulting firm of Almy, Gloudemans, Jacobs & Denne ("A&G") to specifically review the DRA's ratio study and equalization procedures that Ms. Kennedy recounted at this trial. A&G performed this study and drafted a report of their findings entitled: Review of Sales Processing for the DRA Equalization Study: Being Consistently Inconsistent. At trial, the petitioners called David Gaskell, Richard Almy, and Robert Gloudemans to testify about this study and about their findings.

David Gaskell is the former Director of Equalization for the State of New York, a certified tax assessor, and was hired by A&G to perform a field study on the DRA data. Mr. Gaskell hired field collectors to go from town to town to collect information, then he performed an analysis on the information they collected to find procedural patterns of assessment and valuation. He explained to the Court that A&G specifically did not perform an independent ratio study or an independent equalization survey, that they merely reviewed existing DRA data and processes, and documented their findings.

Richard Almy is a former director of the IAAO and is a partner at A&G. Mr. Almy testified that he was in charge of compiling statistics from the DRA's published data and documenting any inconsistencies that he found compared to standard assessing procedures.

Robert Gloudemans was the managing partner in charge of this project for A&G. Mr. Gloudemans is a nationally recognized expert in property appraisal, assessment, and taxation. He was also involved in the development of the IAAO standards for property assessment and appraisal, on which the DRA relies. Recently, Mr. Gloudemans was hired by the State of Vermont to perform an in depth analysis and equalization study of Vermont's property tax system during their education funding difficulties. He was also hired to perform similar studies for approximately 12 other states.

In the New Hampshire study, Mr. Gloudemans chose to study thirty-three representative sample towns to review the DRA's data and procedures. Initially, he chose every eighth town in the State alphabetically, but he found that the majority of these towns were in Rockingham County, and therefore were not a representative sample of the entire State. He explained that he then re-organized the towns by the number of parcels of property contained therein, and he then took every eighth town on the list. He stated that he added four additional towns, and explained the reasons for each addition. These additional towns were Antrim, Keene, Moultonboro, and Salem.

Mr. Gloudemans concluded that New Hampshire is the most property tax reliant state in the nation and that it has the most deficient property tax system.

Mr. Gloudemans identified several areas of concern with the New Hampshire property tax system. First, he stated that the most significant concern is the age of and the inaccuracies in the property data used by the DRA. As conceded by the State, property data is the foundation of any mass appraisal system for property taxation such as New Hampshire's. Accordingly, fair, accurate, and current data is required to maintain uniform valuations of property. Mr. Gloudemans recommended frequent revaluations of all property within the State. The IAAO standard for revaluation is every six years. He noted that the New Hampshire Constitution requires revaluation every five years, which he felt was an even better standard. See N.H. Const. part II, art. 6.

Mr. Gloudemans stated that the keys to establishing equal values across a taxing district are regular and full revaluations of property. Once revaluations of property are regularly being performed, the process of "trending" or "updating" property values can be a very accurate method of keeping current property values for short periods of time. He testified that without regular, full revaluations, the equalization process not only fails to allow values to be equalized across towns, where the process is focused, but also across taxpayers. He stated that there can be no consistency or reliability in a system that does not perform regular revaluations of its property being taxed and that without current, consistent data there can be no proportionality across taxpayers.

Mr. Gloudemans was also concerned with the extremely small sales samples used in the ratio study, because of the importance of the ratio used to New Hampshire's property tax. He stated that the sample size used in the DRA study significantly affects the reliability of the statistics, especially when there are no confidence intervals calculated to monitor their reliability. He suggested that the DRA might either expand the geography of each sample used in the study or expand the time period for the sales used in each sample in the study, but stated that a change of some sort is necessary to achieve fairness in the study.

Mr. Gloudeman's overall recommendation was that the DRA implement uniform standards and procedures for both the ratio study and the equalization process. He stated that this would ensure the reliability of the data used and increase the consistency and accuracy of the results. He explained that all local data used should be validated through audit procedures. He stated that this need for local audits is heightened when the localities perform their own assessments and sales screenings, because each locality may have a vested interest in achieving lower CODs and lower ratios, which directly affect the assessment of taxes to be paid.

The evidence indicated that the DRA has little interest in any town that receives a good COD. However, Mr. Gloudemans stated that it is not enough for the DRA only to examine the data for towns receiving bad CODs. He stated that the DRA needs to ensure that the good CODs calculated are actually representative of the equity in these towns.

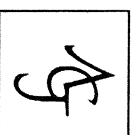
Property Tax Equalization Studies

Presentation for

The Indiana Property Tax Equalization Study Steering Committee

by

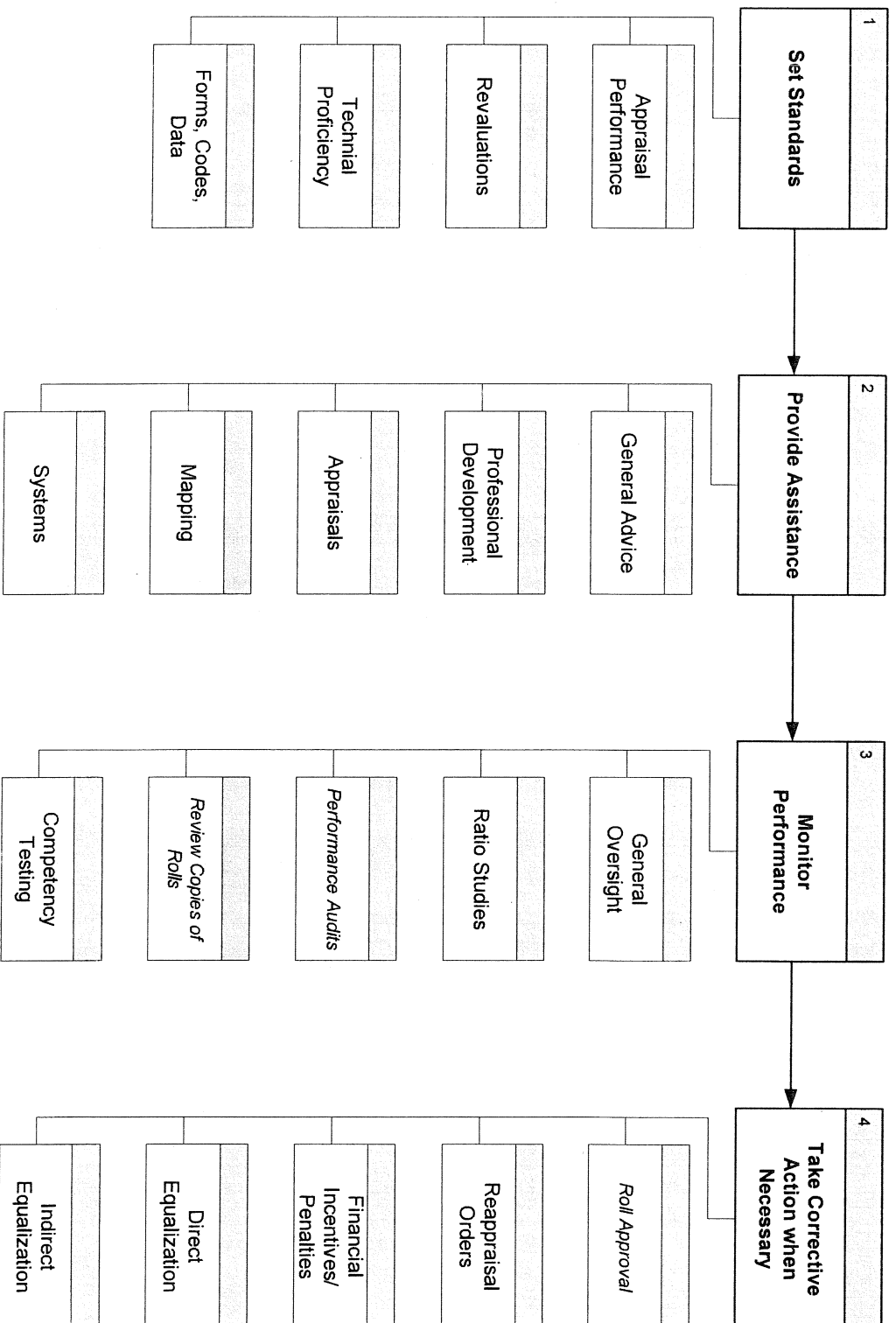
Almy, Gloudemans, Jacobs & Denne



Why Equalize?

- To ensure that assessors comply with the law
- To improve the allocation of state aid
- To ensure that taxpayers benefit equally from state-mandated exemptions

ASSESSMENT SUPERVISION MODEL



Elements of Equalization

- Evaluate performance
 - Ratio studies*
 - Performance audits
- Take action
 - Direct equalization
 - Other enforcement actions
 - Indirect equalization

*The basic formula is:

$$R = AV / MV,$$

where:

R is ratio,

AV is appraised

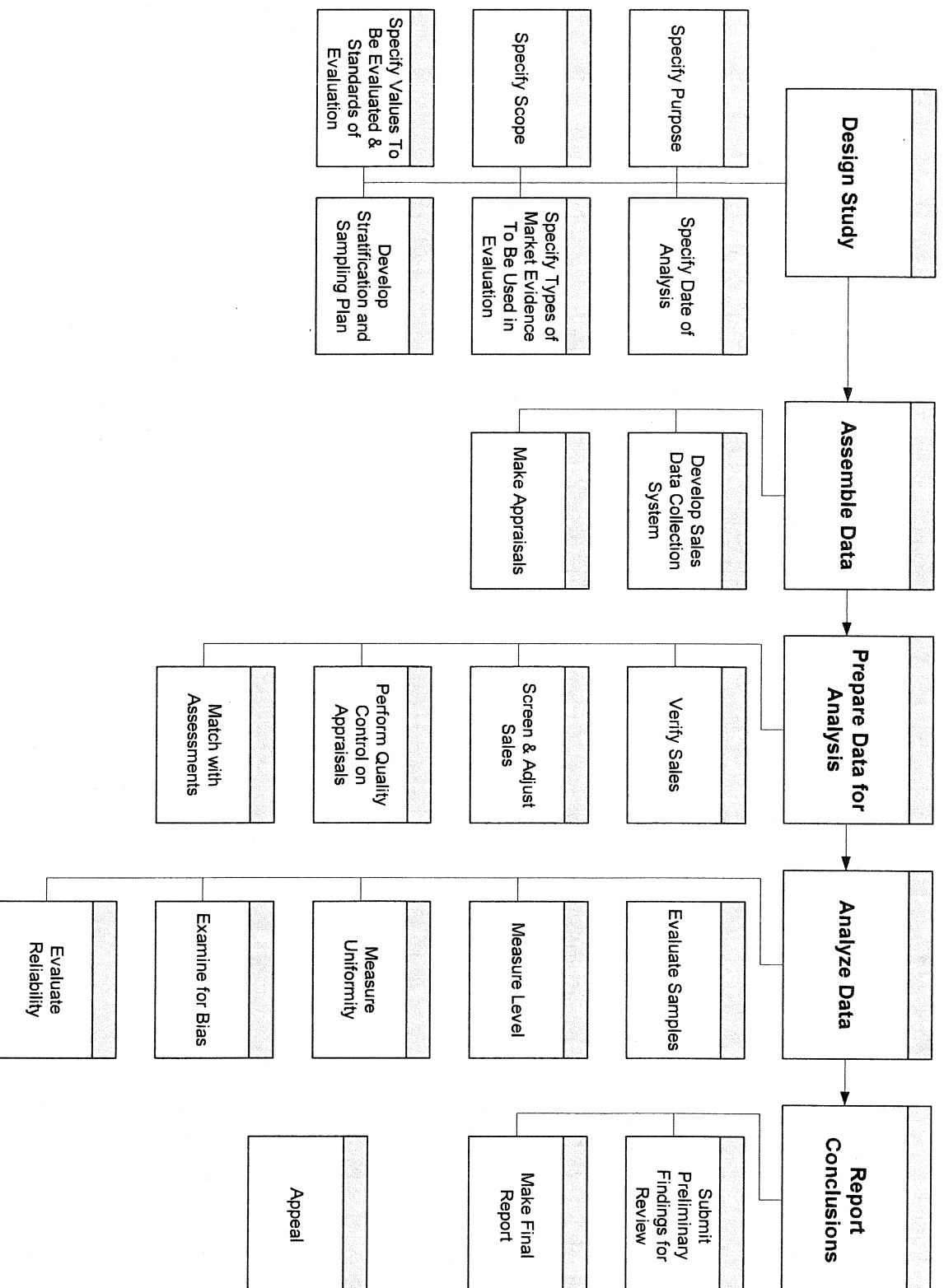
(or assessed) value, and

MV is indicated market value

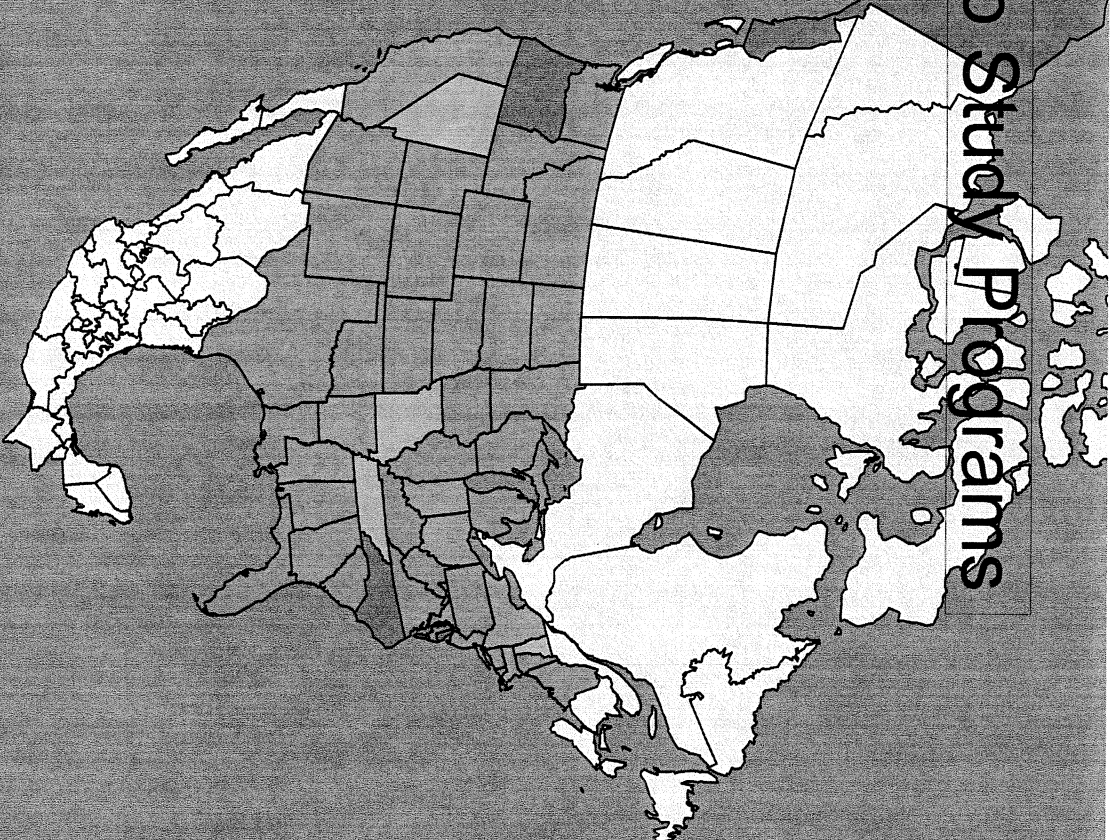
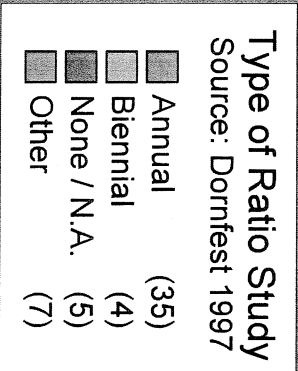
(usually represented by

sales prices (**SP**).

PROCEDURAL MODEL FOR RATIO STUDIES



U.S. Ratio Study Programs



Basis of Ratio Studies

- Sales only
- Appraisals only
- Both sales and appraisals

Steps in Ratio Studies

- Design study
- Assemble data
- Prepare data for analysis
- Determine study groups
- Make statistical analyses
- Review statistical validity
- Report the results

Data Assembly & Preparation

- Sales information
 - Comprehensive list of transfers
 - Accurate price & terms information
 - “Open-market, arm’s length” sales
 - “Outliers”
- Appraised value/assessment information
 - Property characteristics & values as of sale date
- Sales file
- Data on all (especially unsold) properties

Determine Study Groups (Stratification)

Reasons for stratification

- Improve statistical accuracy
- Mirror market segmentation
- Comply with legal requirements

Problems to avoid

- *Unreliably small samples*

Statistical Analyses

- Level of valuation / assessment
 - *Measures of central tendency*
- Uniformity of valuation / assessment
 - *Measures of dispersion / concentration*
- Bias in assessment / valuation or ratio study data
- Statistical reliability
 - *Confidence intervals*

Who Makes Ratio Studies?

(For Equalization)

- States alone
- Local governments alone
- Combinations
 - States make study, local governments help with data
 - Two stage equalization
 - States audit local studies

Enforcement / Equalization Actions

- Roll or rate approval, etc.
- Reappraisal orders
- Monetary incentives & penalties
- Direct equalization
- Indirect equalization

References

- *Standard on Ratio Studies*, International Association of Assessing Officers (IAAO), 1999.
- *Mass Appraisal of Real Property* by Robert Gloudemans, IAAO, 1999.
- “State and Provincial Ratio Study Practices: 1997 Survey Results” by Alan Dornfest, *Assessment Journal* Vol. 4, No. 6.

REVIEW OF SALES RATIO STUDIES

PREPARED FOR

NEBRASKA DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION

By

ALMY, GLOUDEMANS, JACOBS & DENNE

Property Taxation and Assessment Consultants

7630 North 10th Avenue

Phoenix, Arizona 85021

August 11, 2004

extreme, outliers can highly influence the weighted mean (aggregate ratio), particularly if they occur for high-value properties.

PA&T and TERC recognize the effect outliers can have on ratio statistics. In the past TERC requested that PA&T exclude ratios that fell below 0.25 or above 2.00. For the 2003 studies, PA&T suggested instead that the lowest 2.5% and highest 2.5% of ratios in each county be excluded. This rule also proved problematic, as normal ratios could be excluded and sample sizes would be reduced unnecessarily. For 2004 TERC asked PA&T not to trim outliers, since all sales used in the ratio study have been qualified as valid.

IAAO Standards take the position that outliers should be reviewed. If the sale is found to be invalid, it should be removed from the study. If a data error has occurred, the error should be corrected. Currently PA&T does as much.

The IAAO Standard (page 20) then goes on to say that, once identified, outliers can be trimmed in order not to distort the outcome of the ratio study. Note, however, that trimming is permissive, not mandatory. Thus, current TERC policy complies with IAAO Standards, although a procedure for judiciously trimming the worst outliers would also be acceptable under the Standard.

Given the potential leverage outliers can have on the weighted mean, we recommend that the worst outliers be trimmed if the indirect equalization study is retained. The IAAO Standard includes a suggested procedure for trimming outliers, which unfortunately is heavily biased toward trimming high but not low ratios. Happily, this bias is easily rectified by first taking the logarithms of the ratios, which is what we would recommend. We would also recommend that, since the sales have already been screened, that only “extreme” outliers be removed. Technically, an “extreme” outlier is one that lies more than three inter-quartile ranges above the 75th percentile or below the 25th percentile.

5.7 Low-Value Properties

Very low-value properties can create problems in a ratio study. The market for such properties is enigmatic, making prices and sales ratios unpredictable and appraisals difficult. For example, an old dilapidated residence may sell somewhere between \$5,000 and \$15,000. If the property is assessed at \$10,000, the ratio could be .50 or 1.50, even if the assessed value is directly in the middle of the likely range. It is not good to evaluate assessment performance based on such volatile sales prices. Further, low-value sales are accorded the same weight as regular and high-value sales in calculation of both the median and COD. In some cases, TERC has issued equalization orders that turned on the inclusion (or exclusion) of a single very low-value sale.

Because of these problems, we recommend that very low-value sales be excluded from the ratio study for at least direct equalization purposes. The weighted mean (and square-root weighted mean) is only nominally impacted by low-value properties. There are two possible approaches: (a) exclusion of assessments and/or sales prices below a certain dollar value or (b) exclusion of the lowest percentage of assessed values from consideration in the study. Because property values within a class of property can vary greatly among counties, the latter approach would be simpler and more practical. As one scenario, we recommend that PA&T exclude the lowest, say,